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<b>R.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 15-0577</b>
	)	<b>Issued: August 26, 2015</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>TRANSPORTATION SECURITY</b>	)	
<b>ADMINISTRATION, Egg Harbor Township, NJ,</b>	)	
<b>Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case was previously before the Board. OWCP accepted that appellant, a 47-year-old transportation security specialist, sustained contusions to both hands and both knees on June 28, 2003 after stepping into a hole and falling down in the performance of duty. Appellant was placed on the periodic rolls. By decision dated May 14, 2010, OWCP rescinded the acceptance of appellant's claim. In a decision dated September 5, 2012, the Board set aside OWCP's December 27, 2010 decision, remanding the case for OWCP to further develop the evidence to determine whether appellant's injury was sustained in the performance of duty.<sup>2</sup> The facts of the case, as set forth in the prior decision, are incorporated by reference.

In a January 4, 2013 decision, OWCP reversed its May 14, 2010 rescission and retroactively reinstated appellant's medical benefits. It advised her that, if she wished to claim wage-loss compensation, she must submit medical evidence supporting employment-related disability.

Appellant, through counsel, filed a claim for compensation (Form CA-7) for the period May 14, 2010 through January 30, 2012 and submitted a series of medical records dated February 28, 2012 through May 13, 2013, which included a March 15, 2012 x-ray of the right knee, March 22, 2012 magnetic resonance imaging (MRI) scan of the right knee, and an April 27, 2012 electromyography (EMG) of the right leg. Appellant submitted reports from Dr. Scott Sharetts, a neurologist, regarding her diabetic peripheral neuropathy and Dr. Kathleen Ryan, a Board-certified pulmonologist, regarding her sleep apnea.

On September 28, 2011 Dr. Andre Hu, a Board-certified physiatrist, indicated that he saw appellant regarding issues with her fibromyalgia. In a February 6, 2012 report, Dr. Asha Vijayakumar, an internist, diagnosed asthma and diabetes. Appellant submitted emergency room records dated June 9, 2012 from Lourdes Medical Center regarding her visit due to a respiratory condition. In a June 14, 2012 report, Dr. Samuel Wasser, a general surgeon, stated that appellant had a history of diabetes, gastroesophageal reflux disease (GERD), obstructive sleep apnea, and asthma. In reports dated March 21, 2011 through August 21, 2012, Dr. Rebecca Moore, a family practitioner, indicated that combined systolic and diastolic elevation was observed and diagnosed asthma, diabetes, morbid obesity, familial hypercholesterolemia, numbness, peripheral neuropathy, neck pain, knee joint pain, asthma, foot pain, and lower back pain. In a May 13, 2013 attending physician's report, Dr. Moore diagnosed knee and lower back pain and stated that the cause of appellant's conditions were "unknown."

In a July 30, 2013 letter, OWCP requested additional medical evidence establishing appellant's disability for work during the period claimed due to her employment injury and afforded her 30 days to respond to its inquiries.

Appellant submitted reports dated May 26, June 23, and August 11, 2011 from Dr. Hu who indicated that she had a history of multiple orthopedic issues, including left cervical radiculopathy which he diagnosed in 2006. She presented with complaints of diffuse body pains in the neck, back, arms, and legs, which she felt she had since she fell into a hole in June 2003.

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<sup>2</sup> Docket No. 11-1320 (issued September 5, 2012).

Dr. Hu opined that appellant had a chronic pain syndrome and reiterated his diagnosis of fibromyalgia.

By decision dated January 30, 2014, OWCP denied appellant's claim for disability for the period May 14, 2010 through January 30, 2012 because the medical evidence submitted was insufficient to support disability due to any employment injuries.

On February 10, 2014 appellant, through counsel, requested an oral hearing before an OWCP hearing representative, which was held on June 11, 2014.

By decision dated August 27, 2014, OWCP hearing representative affirmed the January 30, 2014 decision.

### **LEGAL PRECEDENT**

Section 8102(a) of FECA<sup>3</sup> sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty...." In general the term "disability" under FECA means "incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."<sup>4</sup> This meaning, for brevity, is expressed as disability for work.<sup>5</sup> For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.<sup>6</sup> Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable, probative, and substantial medical evidence.<sup>7</sup>

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used under FECA and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>8</sup>

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> 20 C.F.R. § 10.5(f). *See also William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

<sup>5</sup> *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>6</sup> *See William A. Archer*, 55 ECAB 674 (2004).

<sup>7</sup> *See Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

<sup>8</sup> *Id.*

## ANALYSIS

The Board finds that appellant has not established that she was disabled for work during the period May 14, 2010 through January 30, 2012 causally related to her employment injuries. While OWCP accepted that appellant sustained contusions to both hands and both knees, appellant bears the burden to establish through medical evidence that she was disabled during the claimed time periods and that her disability was causally related to her accepted injuries.<sup>9</sup> The Board finds that appellant has submitted no rationalized medical evidence explaining how the employment injuries caused disability for work for the period May 14, 2010 through January 30, 2012.

In his reports, Dr. Hu indicated that appellant had a history of multiple orthopedic issues, including left cervical radiculopathy which he diagnosed in 2006. Appellant presented with complaints of diffuse body pains in the neck, back, arms, and legs, which she felt she had since she fell into a hole in June 2003. Dr. Hu opined that appellant suffered from a chronic pain syndrome and diagnosed fibromyalgia. As he failed to offer any probative medical opinion on whether she was disabled on the dates at issue due to her accepted conditions, his reports are of diminished probative value.<sup>10</sup> Further, OWCP has not accepted that appellant experienced an employment-related left cervical radiculopathy or fibromyalgia condition under this claim. As such, appellant has the burden of proof to establish that these conditions are employment related.<sup>11</sup>

In her reports, Dr. Moore indicated that combined systolic and diastolic elevation was observed and diagnosed asthma, diabetes, morbid obesity, familial hypercholesterolemia, numbness, peripheral neuropathy, neck pain, knee joint pain, asthma, foot pain, and lower back pain. In a May 13, 2013 attending physician's report, he diagnosed knee and lower back pain and stated that the cause of appellant's conditions were "unknown." The Board finds that Dr. Moore failed to provide a probative medical opinion on whether appellant was disabled on the dates at issue due to her accepted conditions.

In support of her claim, appellant also submitted emergency room records dated June 9, 2012 and reports from Drs. Sharets, Ryan, Vijayakumar, and Wasser. The Board finds that this medical evidence failed to provide a probative medical opinion on whether appellant was disabled on the dates at issue due to her accepted conditions and, therefore, lacks probative value to establish appellant's claim.

The diagnostic reports of record, including the March 15, 2012 x-ray, March 22, 2012 MRI scan, and April 27, 2012 EMG, do not constitute competent medical evidence as they do not contain rationale by a physician relating appellant's disability to her employment.<sup>12</sup>

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<sup>9</sup> See *supra* notes 6 and 7. See also *V.P.*, Docket No. 09-337 (issued August 4, 2009).

<sup>10</sup> See *Sandra D. Pruitt*, 57 ECAB 126 (2005). See also *V.P.*, *id.*

<sup>11</sup> See *Jaja K. Asaramo*, 55 ECAB 104 (2004).

<sup>12</sup> See, e.g., *K.A.*, Docket No. 14-1626 (issued May 13, 2015) (discussing what makes a medical opinion probative).

Appellant has not met her burden of proof through rationalized medical evidence to establish disability for the period May 14, 2010 through January 30, 2012 causally related to the accepted employment injuries.

On appeal, counsel contends that the medical evidence is sufficient to establish that she continues to suffer residuals of her employment injuries. As noted, it is appellant who bears the burden of proof to establish disability for the period claimed.<sup>13</sup> Based on the findings and reasoning stated above, the Board finds counsel's arguments are not substantiated.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish disability for the period May 14, 2010 through January 30, 2012 causally related to her federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> See *supra* note 9.